

UNITED STATES BANKRUPTCY COURT

Eastern District of California

Honorable Michael S. McManus
Bankruptcy Judge
Sacramento, California

March 13, 2017 at 2:00 a.m.

1.	16-27914-A-13 JANEEN WILLIAMS JPJ-1	MOTION TO DISMISS CASE 2-9-17 [17]
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Tentative Ruling: The motion will be granted and the case dismissed.

This case was filed on November 30, 2016. A proposed plan was not filed with the petition but one was filed on late December 14 and was docketed on December 15. While timely, the plan was filed on the last date for filing a plan. See Fed. R. Bankr. P. 3015(b). The trustee did not receive the proposed plan in time to include it with the notice of the commencement of the case as required by Local Bankruptcy Rule 3015-1(c)(3). That notice was issued on December 15. Consequently, the notice of the commencement of the case indicated that the debtor had not filed a plan and that when was filed it and a separate motion to confirm it would be served on parties in interest. This meant that it was incumbent on the debtor to serve the proposed plan and a motion to confirm it on all parties in interest. See Local Bankruptcy Rule 3015-1(c)(3).

The December 15 notice of commencement of the case was served on the debtor and the debtor's attorney.

A review of the docket reveals that the meeting of creditors was concluded on January 6. A further review of the docket reveals the debtor did not file a motion to confirm her plan until February 28. It is set for hearing on April 17.

Three time constraints dictate the deadline to confirm a plan in a case. First, the debtor must give 28 days of notice of the deadline for objections to confirmation as well as of the confirmation hearing. See Fed. R. Bankr. P. 2002(b). Second, this court requires that parties in interest file written objections to confirmation 14 days prior to the hearing on a motion to confirm a plan. See Local Bankruptcy Rule 9014-1(f)(1). Third, 11 U.S.C. § 1324 requires that a confirmation hearing be held no earlier than 20 days after the meeting of creditors and no later than 45 days thereafter.

February 19, a Sunday is 45 days after January 5. February 20 was a court holiday. So, counting time pursuant to Fed. R. Bankr. P. 9006(a), the 45-day deadline set by section 1324 expired on February 21. Because the April 17 hearing on the confirmation of the plan is outside the 45-day deadline, it cannot be confirmed.

The last date this court held chapter 13 hearings within the 45-day deadline was February 21. In order to give requisite notice of a hearing on February 21, the debtor should have served the plan and a motion to confirm it by January 10 (which is 42 days prior to February 21 and 28 days prior to deadline

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for written objections, February 7).

As indicated above, while the debtor has filed a plan, the debtor has not served it together with a motion requesting its confirmation. It is now too late to do so and comply with section 1324. Because the court will be unable to have a confirmation hearing by the outside deadline set by section 1324, the case will be dismissed. The debtor has unnecessarily delayed confirmation of a plan to the detriment of creditors. See 11 U.S.C. § 1307(c)(1).

Also, the debtor has failed to provide the trustee financial records relating to a bank account and the income of nonfiling spouse. This is a breach of the duties imposed by 11 U.S.C. § 521(a)(3) & (a)(4). To attempt to confirm a plan while withholding relevant financial information from the trustee is bad faith and is further cause for dismissal. See 11 U.S.C. § 1325(a)(3).

2. 15-20884-A-13 JACQUIE ROBINSON MOTION TO
JPJ-4 DISMISS CASE
2-3-17 [67]

Tentative Ruling: The motion will be conditionally denied.

The trustee's Notice of Filed Claims was filed and served on September 9, 2015 as required by Local Bankruptcy Rule 3007-1(d). That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 72 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 36 months and 60 months is the maximum plan duration permitted by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

Nevertheless, given the debtor's currency under the terms of her plan and given the distraction of her minor personal injury of November 2015, the court will give the debtor 75 days to modify the plan such that it will be completed with the time required by applicable law. But, if the debtor is unable to confirm a modified plan by that deadline, the case will be dismissed on the trustee's ex parte application.

Tentative Ruling: The motion will be conditionally denied.

The trustee's Notice of Filed Claims was filed and served on September 5, 2013 as required by Local Bankruptcy Rule 3007-1(d). That notice advised the debtor of all claims filed by creditors. Given the claims filed and their amounts, it will take 77 months to pay the dividends promised by the confirmed plan. The confirmed plan specifies that it must be completed within 60 months, the maximum plan duration permitted by 11 U.S.C. § 1322(d).

The debtor failed to reconcile the plan with the claims, either by filing and serving a motion to modify the plan to provide for all claims within the maximum duration permitted by section 1322(d), or by objecting to claims. This is required by Local Bankruptcy Rule 3007-1(d)(5) which provides: "If the Notice of Filed Claims includes allowed claims that are not provided for in the chapter 13 plan, or that will prevent the chapter 13 plan from being completed timely, the debtor shall file a motion to modify the chapter 13 plan, along with any valuation and lien avoidance motions not previously filed, in order to reconcile the chapter 13 plan and the filed claims with the requirements of the Bankruptcy Code. These motions shall be filed and served no later than ninety (90) days after service by the trustee of the Notice of Filed Claims and set for hearing by the debtor on the earliest available court date." See In re Kincaid, 316 B.R. 735 (Bankr. E.D. Cal. 2004).

The time to modify the plan under Local Bankruptcy Rule 3007-1(d)(5) has expired. This material breach of the plan is cause for dismissal. See 11 U.S.C. § 1307(c)(6).

Nevertheless, given the debtor's currency under the terms of his plan and given his efforts to verify the claim amounts, the court will give the debtor 75 days to modify the plan such that it will be completed with the time required by applicable law. But, if the debtor is unable to confirm a modified plan by that deadline, the case will be dismissed on the trustee's ex parte application.